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No. 99-798

In the Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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8 pp

QUESTION PRESENTED

Whether the imposition of federal income taxes, penalties and interest on petitioner violates the Free Exercise Clause of the First Amendment to the United States Constitution or the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*

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§ 6651(a) 3

§ 6654(a) 3

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A22) is reported at 170 F.3d 173. The opinion of the United States Tax Court (Pet. App. A23-A27) is reported at 110 T.C. 137.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1999. The petition for rehearing was denied on June 10, 1999 (Pet. App. A53). On August 27, 1999, Justice Souter granted an extension of time in which to file a petition for certiorari to and including November 7, 1999. The petition for a writ of certiorari was filed on November 8, 1999 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. Petitioner is a member of the Religious Society of Friends, commonly known as the Quakers, who sincerely believes that participation in war is contrary to God's will (Pet. App. A33-A34). Petitioner also believes that the voluntary payment of taxes—one made without the compulsion of a levy or court order—is against the will of God to the extent that such taxes are used to fund participation in war by others (*id.* at A34).

Beginning in 1985, petitioner was employed by the Philadelphia Yearly Meeting of the Society of Religious Friends (PYM), a Quaker organization. For the years 1985 through 1989, petitioner claimed on her federal withholding forms that she was exempt from taxation. As the result, no federal income tax was withheld from her salary. On April 20, 1989, the Internal Revenue Service directed PYM to withhold federal income taxes from petitioner's salary as if she were married and entitled to one withholding allowance (Pet. App. A34-A35). PYM partially complied with that directive (*id.* at 35). Under PYM policy, however, employees who are religiously opposed to paying taxes that support the military may elect to have PYM set aside (and not pay to the government) a portion of the federal income taxes withheld from the employee's pay equal to the percentage of the federal budget allocated to defense spending (*ibid.*). The portion of withheld taxes not paid over to the government was deposited by PYM into a trust account at petitioner's request (*id.* at A35-A36).

Petitioner has stated that she elected not to pay her federal income taxes in full for the years 1988, 1989, 1992, 1993, and 1994 because "her deeply held religious beliefs precluded her [from doing so]" (Pet. App. A33, A36-A38). Petitioner further stated that she did not

timely file federal income tax returns for any of those years because she believed that it would violate her religious beliefs to provide the government with information that would assist it in collecting her taxes (*id.* at A37).

2. In 1996, the Commissioner of Internal Revenue issued notices of deficiency to petitioner for her federal income taxes for the years 1988, 1989, 1992, 1993, and 1994. The Commissioner also determined that additions to tax were required (i) under Section 6651(a) of the Internal Revenue Code, 26 U.S.C. 6651(a), for petitioner's failure to timely file federal income tax returns and (ii) under Section 6654(a) of the Internal Revenue Code, 26 U.S.C. 6654(a), for petitioner's failure to make required payments of estimated taxes (Pet. App. A29-A32).

3. Petitioner challenged the Commissioner's determinations in Tax Court. That court, however, rejected petitioner's claims and entered decision in favor of the Commissioner. The court first rejected petitioner's reliance upon the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.* (RFRA). The court noted that RFRA restored the compelling interest test applied prior to the decision in *Employment Division, Department of Human Resources* v. *Smith*, 494 U.S. 872 (1990), and that, prior to *Smith*, "the Supreme Court repeatedly held that neutral, generally applicable tax laws meet the compelling interest test" (Pet. App. A25-A26). In rejecting petitioner's claim that the government was required to accommodate her religious-based opposition to war, the court explained that (*id.* at A26 (citations omited)):

> [T]he Supreme Court has established that uniform, mandatory participation in the Federal income tax system, irrespective of religious belief, is a compelling governmental interest. As a result, requiring [taxpayer's] participation in the Federal income tax system is the only, and thus the least restrictive, means of furthering the Government's interest.

The court therefore concluded that petitioner was liable for the income tax deficiencies asserted in the notices of deficiency (*ibid.*). For the same reasons, and in reliance upon its prior decision in *Babcock* v. *Commissioner*, 51 T.C.M. (CCH) 931 (1986), the court also sustained the additions to tax imposed under Sections 6651(a)(1) and 6654(a) for petitioner's willful failure to comply with the filing and estimated tax requirements of the Internal Revenue Code (Pet. App. A26-A27).

4. The court of appeals affirmed (Pet. App. A1-A22). The court concluded that neither RFRA nor the Constitution bars imposition of the taxes and additions to tax in this case because "[t]he least restrictive means of furthering a compelling interest in the collection of taxes * * * is[,] in fact, to implement that system in a uniform, mandatory way, with Congress determining in the first instance if exemptions are to [be] built into the legislative scheme" (*id.* at A14).

ARGUMENT

This case presents the same questions currently pending on petition for writ of certiorari in *Browne* v. *United States*, No. 99- 632. For the reasons detailed in our brief in opposition in *Browne*, the petition for a writ

of certiorari should be denied both in *Browne* and in this case.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1999

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* We are providing herewith to petitioner a copy of the government's brief in opposition to the petition in *Browne*.